IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
First Appeal No.3026 of 2006

Mr.K. Sridharan Thampi .. .. Appellant
(Orig.Plaintiff)

v/s.

The Indian Institute of Bankers. .. Respondents
(Orig. Defendants)

Mr.R.B. Parab for Appellant.

Mrs.Surti i/by M/s.Gandhi & Associates for Respondents.

CORAM : SMT.ROSHAN DALVI, J.

DATED : 17th April, 2007

P.C. :

1. The Appellant (original Plaintiff) has challenged the judgment of the Bombay City Civil Court dated 15.6.2005, dismissing his Suit for reliefs in respect of an examination of banking undertaken by the Appellant.

2. The Appellant has been found involved in mass copying in the examination that was conducted in December 1990 in Paper No.2 amongst the various papers that the Appellant appeared for and passed between February 1990 and July 1994.

3. The Appellant's answer papers were sent, amongst others to the examiner, who was the Assistant General Manager of Bank of Rajasthan Ltd. He was, therefore, an

expert examiner for banking examinations. He assessed the written examination papers of the Appellant together with various other candidates. He found mass copying. He, therefore, by his letter dated 25.1.1991 addressed to the Respondents informed them how and when he came to the conclusion that there was mass copying by unfair means adopted by several candidates amongst whom was the Appellant.

4. The inquiry came to be held. The letter of the Inquiry Officer at Exhibit-21 in evidence shows how 125 answer papers were assessed and how the conclusion about mass copying by unfair means came to be reached.

5. The Appellant’s answer paper has itself been produced at Exhibit-22 in evidence.

6. The expert examiner has observed how from some standard answer-sheets / guides supplied in the examination hall, numerous candidates have given verbatim the same answers. Most of the candidates have attempted the same questions also. The learned Judge has considered the contents of the letter of the examiner, detailing how the unfair means were adopted in mass copying.

7. The learned Judge has held that the expert, who is a Bank Manager examining the papers of banking practices and

concluding about the mass copying, is an aspect of fact which must be accepted by the Court unless contrary is proved. That is the correct enunciation of the position on facts and law. The Appellant has challenged the decision relating to mass copying. It is for the Appellant to prove that he was not a part of any mass copying. The Appellant has not produced any such material. The Appellant has not even shown any malice or victimization against him. An inquiry has been held. It is mentioned to Court that even a Writ Petition was filed earlier which came to be dismissed. For the inquiry which was held in 1991, a Suit came to be filed in 2003.

8. It is the contention of the Appellant that in view of the issue relating to limitation being raised, the learned Judge should have specifically considered the issue of limitation. The Advocate on behalf of the Appellant contends that the entire judgment does not show that issue being considered though in the findings about reasons given in the judgment that issue is shown to be proved, though that is not separately considered. However, the issue of limitation is not answered against the Appellant. Merits of the case are seen. Hence, the Appellant has suffered no prejudice. The merits having been considered and the onus which was upon the Appellant (original Plaintiff) not having been proved, the Suit is rightly dismissed. There is no error in the conclusion. Appeal is dismissed under the

provisions of Order 41 Rule 11 of the Code of Civil Procedure.

(SMT. ROSHAN DALVI, J.)